

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

OLIVER UDEMBA,	)	
	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO: 05 CV 11161 RGS
	)	
CUMBERLAND FARMS, INC.	)	
AND EMILE C. TAYEH,	)	
	)	
Defendant.	)	

**MOTION OF DEFENDANT CUMBERLAND FARMS, INC. FOR LEAVE  
TO SUBMIT REPLY TO PLAINTIFF'S OPPOSITION TO THE COMPANY'S  
MOTION FOR RECONSIDERATION, WITH INCORPORATED REPLY**

Pursuant to LR 7.1(b)(3), Defendant Cumberland Farms, Inc. ("the Company" or "CFI") respectfully requests leave to reply to the Plaintiff's Opposition to the Company's motion for reconsideration of the Court's July 27, 2006 Order granting in part and denying in part the Company's motion for attorneys' fees.

In his Opposition to the Company's motion, the Plaintiff relies upon the fact that the EEOC found "reasonable cause" to credit some or all of the allegations in the Plaintiff's charge of discrimination. However,

the fact that "an administrative agency has reached a contrary conclusion as to the merits of a plaintiff's case is not in any sense conclusive; nor does it bar the allowance of attorney's fees to a defendant" who has prevailed in a subsequent judicial proceeding. *See Carrion v. Yeshiva University*, 535 F.2d 722 (CA 2, 1976).

*Charves v. The Western Union Telegraph Co.*, 711 F.2d 462, at 464 (1st Cir. 1983).

CUMBERLAND FARMS, INC.

By its attorneys,

MOON, MOSS & SHAPIRO, P.A.  
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Portland, ME 04112-7250  
(207) 775-6001

DATED: August 14, 2006  
Portland, ME

/s/ Philip J. Moss  
Philip J. Moss, BBO# 358020

**CERTIFICATE OF SERVICE**

I, Philip J. Moss, attorney for Cumberland Farms, Inc., hereby certify that a paper copy of the Motion of Defendant Cumberland Farms, Inc. for Leave to Submit Reply to Plaintiff's Opposition to the Company's Motion for Reconsideration, with Incorporated Reply, electronically filed with the Clerk of Court using the CM/ECF system, has been sent this date by first-class U.S. mail, postage prepaid to the following:

Aderonke O. Lipede, Esq.  
434 Massachusetts Avenue, Suite 401  
Boston, MA 02118  
(BBO # 567431)

and I understand that the CM/ECF system will send electronic notification of such filing to:

Scott A. Lathrop, Esq.  
Scott A. Lathrop & Associates  
122 Old Ayer Road  
Groton, MA 01450  
(BBO No. 287820)

Dated: August 14, 2006

/s/ Philip J. Moss  
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